



EXHIBIT 3
DATE 3-18-09
SR 351

NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

February, 2009

[To: State Legislative Leaders and Financial Services
Committee Chairpersons and Vice Chairpersons]

Joe Hackney
Speaker of the House
North Carolina
President, NCSL

Gary VanLandingham
Director, Office of Program
Policy Analysis and Government
Accountability (OPPAGA)
Staff Chair, NCSL

William T. Pound
Executive Director

We write on behalf of the National Conference of State Legislatures (NCSL) to respectfully urge your consideration of legislation in this legislative session to implement the federal Secure and Fair Enforcement (S.A.F.E.) for Mortgage Licensing Act. **If your state fails to act by July 31, 2009, your authority to license and regulate mortgage loan originators would be preempted.** Mortgage loan originators in any state that fails to act by July 31, 2009 would be licensed and regulated by the federal Department of Housing and Urban Development (HUD).

The S.A.F.E. Act was included in the Housing and Economic Recovery Act (H.R. 3221), signed into law on July 30, 2008. This provision requires that any residential mortgage originator must be either state-licensed or federally registered by July 31, 2009. A state not enacting legislation by July 31st, can be granted a two-year extension by HUD if they make a good faith effort to incorporate a state-licensing system by that date. In addition, states must ensure loan originators register with the Nationwide Mortgage Licensing System (NMLS) for accountability and transparency purposes.

The state-licensing system must meet several minimum requirements to maintain supervisory authority for loan originators. These include having a process to assess individuals acting as mortgage originators in their state without proper license or registration, criminal history and credit background checks, pre-licensure education and testing, establishing a minimum net worth or surety bonding requirements to reflect the dollar amount of loans by the originator and abiding by the obligations in the Nationwide Mortgage Licensing System, among others.

The Conference of State Banking Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) have created model state legislation which provides states with guidance in creating a system of licensure. This model state law (http://www.csbs.org/AM/Template.cfm?Section=SAFE_Act) addresses the aforementioned major standards under the S.A.F.E. Act which state regulatory agencies and mortgage loan originators must abide by. In January 2009, HUD reviewed the model legislation and determined that it met the minimum requirements of the S.A.F.E. Mortgage Licensing Act.

We also must bring to your attention that in some states a version of the legislation may have been introduced that while purporting to implement the SAFE Act will actually dilute the minimum license requirements and will result in a state being determined to be out of compliance with the SAFE Act. This would allow HUD to then license and regulate the brokers in that state. We would urge you to review any legislation already introduced in your state to ensure that the legislation meets the minimum requirements as outlined in the CSBS model.

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We appreciate the opportunity to bring this matter your attention. Should you have questions about our concerns, please contact Neal Osten at 202-624-8660 (neal.osten@ncsl.org) or Jeff Hurley at 202-624-7753 (Jeff.Hurley@ncsl.org) in NCSL's Washington office.

Sincerely,

A handwritten signature in black ink, reading "Joe Hackney". The signature is fluid and cursive, with the first name "Joe" and last name "Hackney" clearly legible.

Speaker Joe Hackney, NCSL President



OFFICE OF HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

March 17, 2009

Annie M. Goodwin
Commissioner
Division of Banking and
Financial Institutions
301 South Park, Suite 316
Helena, MT 59620

Dear Commissioner Goodwin:

Enclosed please find a chart summarizing our quick analysis of Senate Bill 351. The chart identifies potential inconsistencies between SB 351 and the minimum requirements of the SAFE Act that were immediately apparent. Though the chart is not offered as a comprehensive analysis of SB 351, we hope you will find it useful at this point in Montana's legislative process.

Please don't hesitate to contact me if you have any questions.

Sincerely,

William W. Matchneer III
Associate Deputy Assistant Secretary for
Regulatory Affairs and Manufactured Housing

Enclosure

MONTANA'S SAFE ACT LEGISLATION
MARCH 17, 2008

| | Montana's SAFE Act Legislation | Corresponding SAFE Act Provisions and HUD Commentary on SAFE Act, where applicable | HUD Comments |
|----|---|--|--|
| 1. | <p>Sec. 4 Exemptions—proof of exemption. (1) The provisions of this part do not apply to:</p> <p>[Generally]</p> | No comparable SAFE Act provision. | <p>Several of the Montana legislation's exemptions from all three classes of state licensure are provided for "persons" that are not individuals but entities (agencies, developers, pension plans, GSEs, and 501(c)(3) home ownership organizations) and therefore not subject to SAFE Act-required licensing of individual loan originators anyway. Such exemptions would be noncompliant with the SAFE Act if they were construed to exempt an individual working as a loan originator who would otherwise be required to be licensed under the SAFE Act.</p> |
| 2. | <p>Sec. 4 Exemptions—proof of exemption. (1) The provisions of this part do not apply to:</p> <p>(D) A person employed by or that works as an independent contractor for a licensee under this part to perform only administrative or clerical tasks as a loan processor or underwriter on behalf the licensee and who does not solicit borrowers or negotiate the terms of loans on behalf of the licensee;</p> | <p>SEC. 1504. LICENSE OR REGISTRATION REQUIRED.</p> <p>(b) LOAN PROCESSORS AND UNDERWRITERS.—</p> <p>(1) SUPERVISED LOAN PROCESSORS AND UNDERWRITERS.—</p> <p>(1) SUPERVISED LOAN PROCESSORS AND UNDERWRITERS.—</p> <p>A loan processor or underwriter who</p> | <p>The SAFE Act provides that an independent contractor who works "as a loan processor or underwriter" (i.e., who performs the listed "clerical or support duties" described in the SAFE Act) must obtain a loan originator license even though the individual does not engage in the business of a loan originator. The clause, "[O]r that works as an independent contractor for," is therefore inconsistent with the section 1504 of the SAFE Act.</p> |

| Montana's SAFE Act Legislation | Corresponding SAFE Act Provisions and HUD Commentary on SAFE Act, where applicable | HUD Comments |
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| | <p>does not represent to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will perform any of the activities of a loan originator shall not be required to be a State-licensed loan originator.</p> <p>(2) INDEPENDENT CONTRACTORS.—An independent contractor may not engage in residential mortgage loan origination activities <u>as a loan processor or underwriter</u> unless such independent contractor is a State-licensed loan originator. (emphasis added)</p> <p>SEC. 1503. DEFINITIONS.</p> <p>(4) LOAN PROCESSOR OR UNDERWRITER.—</p> <p>(A) IN GENERAL.—The term “loan processor or underwriter” means an <u>individual who performs clerical or support duties</u> at the direction of and subject to the supervision and instruction of—</p> <p>(i) a State-licensed loan originator; or</p> <p>(ii) a registered loan originator.</p> <p>(B) CLERICAL OR SUPPORT</p> | |

| Montana's SAFE Act Legislation | Corresponding SAFE Act Provisions and HUD Commentary on SAFE Act, where applicable | HUD Comments |
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| | <p>DUTIES.—For purposes of subparagraph (A), the term “clerical or support duties” may include—</p> <p>(i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and</p> <p>(ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.</p> | |
| <p>3. Sec. 4 Exemptions—proof of exemption. (1) The provisions of this part do not apply to:</p> <p>(F) A person who offers, negotiates, or provides financing in conjunction with the sale of real property owned by that person and that is secured by a contract for deed, mortgage, deed of trust, or other equivalent security interest on the real property sold;</p> | <p>HUD's Commentary on the SAFE Act:</p> <p>HUD's commentary issued in conjunction with HUD's review of the CSBS/AARMR model legislation provides that “the commercial context implied by the taking of an “application” is also absent where an individual seller provides financing to a buyer pursuant to the sale of the seller's own residence. The frequency with which a particular seller provides financing is so limited that HUD's view is that Congress did not</p> | <p>As worded, the Montana legislation may be read to exempt from licensing those individuals (and entities) who engage in the business of a loan originator with respect to property they own, even if the individual is a commercial developer selling potentially thousands of homes. To avoid this interpretation, which would not be consistent with the SAFE Act, “[P]erson” and “real property owned by that person” must be changed to “individual” and “the seller's own residence” to comply with the SAFE Act</p> |

| Montana's SAFE Act Legislation | Corresponding SAFE Act Provisions and HUD Commentary on SAFE Act, where applicable | HUD Comments |
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| | intend to require such sellers to obtain loan originator licenses." | as elaborated upon in HUD's commentary that accompanied HUD's review of the CSBS/AARMR model legislation. |
| <p>4. Sec. 3 Definitions</p> <p>(21) "Mortgage Servicer Loss Mitigation Specialist" means a person who on behalf of the person making the residential mortgage loan works with a borrower who is in default or in foreseeable likelihood of a default to modify or refinance either temporarily or permanently the borrower's obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process.</p> <p>Sec. 4 Exemptions—proof of exemption. (2) The department may exempt from this part mortgage servicer loss mitigation specialists if the department determines that an exemption of a mortgage servicer loss mitigation specialist is not in violation of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act, Public Law 110-289.</p> | No comparable provision in the SAFE Act. | <p>At this time HUD has not made a formal determination as to the applicability of the SAFE Act to a modification or refinancing. The definition of "mortgage servicer loss mitigation specialist," combined with Section 4(2) of the Montana legislation, is not inconsistent with the SAFE Act so long as Section 4(2) is not construed as displacing HUD's authority to interpret the SAFE Act.</p> |

| Montana's SAFE Act Legislation | Corresponding SAFE Act Provisions and HUD Commentary on SAFE Act, where applicable | HUD Comments |
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| <p>5. Sec. 5 Loan processors and Underwriters. (2) <u>A loan processor or underwriter who is an independent contractor may not engage in residential mortgage loan originator activities of a loan processor or underwriter unless licensed as a mortgage broker or a mortgage loan originator under this part.</u> Each independent contractor loan processor or underwriter licensed as a mortgage broker or a mortgage originator shall maintain a valid unique identified issued by the nationwide mortgage licensing system and registry.</p> | <p>Corresponding SAFE Act Provisions and HUD Commentary on SAFE Act, where applicable</p> <p>SEC. 1504. LICENSE OR REGISTRATION REQUIRED.</p> <p>(b) LOAN PROCESSORS AND UNDERWRITERS.—</p> <p>(1) SUPERVISED LOAN PROCESSORS AND UNDERWRITERS.—</p> <p>* * *</p> <p>(2) INDEPENDENT CONTRACTORS.—<u>An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless such independent contractor is a State-licensed loan originator.</u> (emphasis added)</p> <p>SEC. 1503. DEFINITIONS.</p> <p>(4) LOAN PROCESSOR OR UNDERWRITER.—</p> <p>(A) IN GENERAL.—The term “loan processor or underwriter” means an <u>individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of—</u></p> <p>(i) a State-licensed loan originator; or</p> <p>(ii) a registered loan originator.</p> <p>(B) CLERICAL OR SUPPORT DUTIES.—For purposes of subparagraph</p> | <p>See item no. 2.</p> <p>The Montana legislation rearranges the wording of Section 1504 of the SAFE Act pertaining to loan processors and underwriters. Although the wording of Section 5 of the Montana legislation is different from that in Section 1504, the assumption is that the interpretation given Section 5 is the same as that given Section 1504 of the SAFE Act, which is to require an individual who performs the “clerical and support duties” of a loan processor or underwriter to be licensed if the individual is an independent contractor.</p> |

| Montana's SAFE Act Legislation | Corresponding SAFE Act Provisions and HUD Commentary on SAFE Act, where applicable | HUD Comments |
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| | <p>(A), the term "clerical or support duties" may include—</p> <ul style="list-style-type: none"> (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and (ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms. | |
| <p>6. Sec. 16 Waiver of Education Requirements for Current Mortgage Broker and Mortgage Loan Originator Licensees.</p> <p>(1) Upon application by a current mortgage broker or mortgage loan originator licenses for license renewal, the department shall grant a waiver of the precensuring education requirements established in [section 7] and the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, if:</p> <p>* * * * *</p> | No comparable provision. | The SAFE Act does not appear to permit waiver of basic licensing requirements for any individual. |

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| 7. | <p>Sec. 3 Definitions</p> <p>(24) (a) "Originate" means:</p> <p>(i) taking a residential mortgage loan application;</p> <p>(ii) offering or negotiating terms of a residential mortgage loan for compensation or gain; or AND</p> <p>(iii) assisting a consumer in obtaining or applying to obtain a residential mortgage loan by, including but not limited to:</p> <p>(A) advising on loan terms including rates, fees, other costs;</p> <p>(B) preparing loan packages; and</p> <p>(C) collecting information on behalf of the consumer with regard to a residential mortgage loan.</p> <p>(b) The term does not include the performance of purely administrative or clerical tasks as a loan processor or underwriter;</p> | <p>SEC. 1503. DEFINITIONS.</p> <p>(3) LOAN ORIGINATOR.—</p> <p>(A) IN GENERAL.—The term "loan originator"—</p> <p>(i) means an individual who—</p> <p>(I) takes a residential mortgage loan application; and</p> <p>(II) offers or negotiates terms of a residential mortgage loan for compensation or gain;</p> <p>(B) OTHER DEFINITIONS RELATING TO LOAN ORIGINATOR.—</p> <p>For purposes of this subsection, an individual "assists a consumer in obtaining or applying to obtain a residential mortgage loan" by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.</p> | <p>Although the SAFE Act includes, in Section 1503(B), "other definitions relating to loan originator," the SAFE Act does not include these other definitions as a third prong to the definition of loan originator. The SAFE Act's definition of mortgage loan origination provides the minimum requirements for licensure. In including the language of Section 1503(B) of the SAFE Act as a third prong in the definition of "originates" in the Montana legislation, the construction of this definition cannot exclude any individuals who would otherwise be included under the SAFE Act's two-pronged test.</p> |
| 8. | <p>Sec. 3 Definitions:</p> <p>(28) "Residential Mortgage Loan" means a loan primarily for personal,</p> | <p>Sec. 1503</p> <p>(3)(A) In general.— The term "loan originator"</p> <p>(i) means an individual who-</p> | <p>The definition of "residential real estate" is consistent with the SAFE Act so long as it is not relied on to construe the exemption for "nonresidential real estate"</p> |

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| | <p>family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a <u>dwelling</u>, as defined in regulation Z of the Truth in Lending Act, 12 CFR 226.2, or on residential real estate located in Montana.</p> <p>(29) "Residential Real Estate" means any <u>real property</u> located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24CFR 3500.5(b)(4).</p> <p>Sec. 4. (1) (H) A person engaged solely in nonresidential or commercial real estate lending:</p> | <p>(I) takes a <u>residential mortgage</u> loan application; and (II) offers or negotiates terms of a <u>residential mortgage loan</u> for compensation or gain;</p> | <p>lending in Section 4(1)(H) of the Montana legislation. Doing so could result in erroneously excluding certain transactions, such as manufactured housing chattel loans, from coverage.</p> |
| 9. | <p>Section 3. Definitions.</p> <p>(18) "Mortgage broker" means a person or entity that provides services for a fee as an intermediary between a borrower and a mortgage lender in obtaining financing for the borrower that is to be secured by a residential dwelling containing one to four units, for between one and four families that is <u>licensed</u></p> | <p>SEC. 1503. DEFINITIONS.</p> <p>(3) LOAN ORIGINATOR- (A) IN GENERAL- The term 'loan originator' --(i) means an individual who- (I) takes a residential mortgage loan application; and (II) offers or negotiates terms of a residential mortgage loan for compensation or gain;</p> | <p>The definitions of "mortgage lender" and "mortgage broker," when read together with the definition of "mortgage loan originator" appear to omit individuals who are performing loan origination activities and are not working for a (state licensed) mortgage lender or (state licensed) mortgage broker, but who are also not exempted from state licensing under the SAFE Act's definition of "registered loan</p> |

| Montana's SAFE Act Legislation | Corresponding SAFE Act Provisions and HUD Commentary on SAFE Act, where applicable | HUD Comments |
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| <p>with the state, and that is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.</p> <p>(19) (a) "Mortgage lender" means a person, licensed by the state, that WHO IS REGISTERED WITH AND MAINTAINS A UNIQUE IDENTIFIER THROUGH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY AND DOES ANY OF THE FOLLOWING:</p> <p>(I) closes a residential mortgage loans;</p> <p>(II) advances funds, offers to advance funds, or commits to advancing funds for a residential mortgage loan applicant.</p> <p>(B) A mortgage lender may also be licensed as a mortgage broker upon meeting the qualifications for that license WHO ALSO PERFORMS THE ACTIVITIES OF A MORTGAGE BROKER MUST BE LICENSED AS A MORTGAGE BROKER, AS PROVIDED IN [SECTION 7], AND BE REGISTERED WITH AND MAINTAIN A UNIQUE IDENTIFIER THROUGH THE NATIONWIDE</p> | <p>(7) REGISTERED LOAN ORIGINATOR- The term 'registered loan originator' means any individual who--</p> <p>(A) meets the definition of loan originator and is an employee of--</p> <p>(i) a depository institution;</p> <p>(ii) a subsidiary that is--</p> <p>(I) owned and controlled by a depository institution; and</p> <p>(II) regulated by a Federal banking agency; or</p> <p>(iii) an institution regulated by the Farm Credit Administration; and</p> <p>(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.</p> <p>SEC. 1504. LICENSE OR REGISTRATION REQUIRED.</p> <p>(a) In General- Subject to the existence of a licensing or registration regime, as the case may be, an individual may not engage in the business of a loan originator without first--</p> <p>(1) obtaining, and maintaining annually--</p> <p>(A) a registration as a registered loan</p> | <p>originator." For example, individuals who are performing loan origination activities on behalf of a federally regulated banking institution, but are not employees of such institution do not appear to be covered under the Montana legislation. The SAFE Act requires these individuals to be licensed under state law. The SAFE Act requires all "loan originators" to be licensed unless they are permitted to be "registered loan originators" as defined under the SAFE Act.</p> |

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| | <p>MORTGAGE LICENSING SYSTEM AND REGISTRY.</p> <p>(b)(C) The term does not include mortgage lenders that are:</p> <ul style="list-style-type: none"> (i) depository institutions; (ii) subsidiaries that are owned and controlled by a depository institution and regulated by a federal banking agency; or (iii) institutions regulated by the federal farm credit administration. <p>(20) (a) "Mortgage loan originator" means an individual who is employed by a mortgage broker OR A MORTGAGE LENDER to assist borrowers by originating a residential loan, who is licensed by the state, and who is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.</p> <p>(b) The term does not include an individual engaged solely as a loan processor or underwriter.</p> | <p>originator; or</p> <p>(B) a license and registration as a State-licensed loan originator; and</p> <p>(2) obtaining a unique identifier.</p> | |

Amendments to SB 351.02
As proposed in the House Business and Labor Committee
Proposed by the Division of Banking and Financial Institutions
March 17, 2009

Page 1, line 7

Following: "MORTGAGE BROKERS"

Insert: ", MORTGAGE LENDERS,"

Page 1, line 12

Following: "REPEALING SECTIONS"

Insert: "32-9-119"

Page 1, line 16

Following: "EFFECTIVE DATE"

Strike: "AND A TERMINATION DATE"

Page 2, line 6

Following: "originator"

Insert: "with respect to any residential real estate located in Montana"

Page 2, line 11

Following: "person"

Strike: "licensed"

Insert: "acting"

Page 2, line 12

Following: "part"

Strike: "or who is employed as a registered mortgage loan originator"

Page 2, line 12

Following: "required to"

Strike: "register"

Insert: "be licensed and registered"

Page 2, line 13

Following: "registry"

Insert: "by the date set forth in 32-9-108(4)."

Page 2, lines 17 through 21

Strike: Subsection (1) in its entirety

Renumber: subsequent subsections

Page 2, line 26

Following: "person"

Strike: "or entity"

Page 2, lines 29 and 30

Following: "means"

Strike: "an individual through mortgage lending."

Insert: "a person seeking a residential mortgage loan."

Page 3, line 2

Insert: "(7) 'Control' means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise. A person is presumed to control an entity if that person:

(a) is a director, general partner, or executive officer;

(b) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(c) in the case of a limited liability company, is a managing member; or

(d) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more of the capital."

Renumber: subsequent subsections.

Page 3, lines 6 through 10

Following: "means"

Strike: "an individual through mortgage loans."

Insert: "a mortgage loan originator with at least 3 years of experience as a mortgage loan originator who is designated by an entity as the individual responsible for the operation of a particular location that is under the designated manager's full management, supervision, and control."

Page 3, line 11

Following: "organization,"

Strike: "other than"

Insert: "including"

Page 3, lines 11 through 12

Following: "proprietorship"

Strike: "or an individual through originator services."

Page 3, line 13

Insert: "(11) 'Escrow account' means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage lender and that is maintained solely for the holding and payment of escrow funds.

(12) 'Escrow funds' means money entrusted to a mortgage lender by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan."

Renumber: subsequent subsections

Page 3, line 25

Insert: "(18) 'Loan commitment' means a statement transmitted in writing or electronically transmitted by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular mortgage loan to a particular borrower."

Renumber: subsequent subsections

Page 3, lines 27 through 30

Following: "means"

Strike: "an individual through originator"

Insert: "an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a licensee or a person exempt from licensure under 32-9-104. For purposes of this subsection (19), clerical or support duties may include, subsequent to the receipt of a loan application:

(a) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(b) communicating with a borrower to obtain information necessary for processing or underwriting a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling borrowers about residential mortgage loan rates or terms."

Page 4, lines 8 through 12

Following: "means"

Strike: "a person through and registry"

Insert: "an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration. For purposes of this subsection (21), attempting to or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower."

Page 4, lines 13 through 27

Following: "means"

Strike: "a person through administration."

Insert: "means an entity that closes a mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a mortgage loan applicant."

Page 4, line 28 through Page 5, line 1

Following: "means"

Strike: "an individual through underwriter."

Insert: "an individual who for compensation or gain or in the expectation of compensation or gain:

(i) takes a residential mortgage loan application; or

(ii) offers or negotiates terms of a residential mortgage loan.

(b) The term does not include an individual:

(i) engaged solely as a loan processor or underwriter, except as provided in [section 5];

(ii) who performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301, unless the person is compensated by a mortgage lender, a mortgage broker, a mortgage loan originator, or any agent of the mortgage lender, mortgage broker, or mortgage loan originator; or

(iii) solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D)."

Page 5, lines 9 through 11

Following: "for the"

Strike: "registration through originators"

Insert: "licensing and registration of mortgage lenders, mortgage brokers and mortgage loan originators."

Page 5, lines 14 through 30

Strike: subsection 24 in its entirety

Renumber: subsequent subsections

Page 6, line 12

Following: "law"

Insert: “; (e) offering to engage in an activity, or act in any capacity described in subsections (26)(a) through (26)(d).”

Page 6, lines 14 through 22

Following: "who:"

Strike: subsections (a) and (b)

Insert: "(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the farm credit administration; and

(b) is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.”

Page 6, line 25

Following: “in”

Strike: "regulation Z"

Insert: “section 103(v)”

Page 7, line 3

Insert: "(31) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.”

Renumber: subsequent subsections

Page 7, lines 27 and 28

Following: "(a)"

Strike: "agencies of through subdivisions.”

Insert: "an entity that is an agency of the federal, state or municipal government.”

Page 7, lines 29 through Page 8, line 5

Following: "(b)"

Strike: "a person through credit administration.”

Insert: "an entity described in 32-9-103(29)(a)(i), (a)(ii) or (a)(iii);”

Page 8, lines 6 through 9

Following: "loan originator"

Strike: "and the employer through applies;”

Insert: "when acting for an entity described in 32-9-103(29)(a)(i), (a)(ii) or (a)(iii);”

Page 8, lines 10 through 13

Strike: Subsection (d) in its entirety.

Renumber: subsequent subsections

Page 8, line 16

Insert: "(e) an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's own residence;"

Renumber: subsequent subsections

Page 8, lines 18 through 20

Strike: Subsection (f) in its entirety

Page 8, line 21

Following: "made by"

Strike: "a person"

Insert: "an entity"

Page 8, line 21

Following: "employee of"

Strike: "that person"

Insert: "the entity"

Page 8, line 23

Following: "(h)"

Strike: "A person"

Insert: "An entity"

Page 8, line 23

Following: "solely in"

Strike: "nonresidential or"

Page 8, line 24

Following: "(i)"

Strike: "A person"

Insert: "An entity"

Page 9, line 17

Following: "Public Law 110-289"

Insert: "or the Secretary of Housing and Urban Development determines by guideline, interpretation, or rule that this exemption does not comply with the SAFE Act"

Page 9, lines 25 and 26

Following: "engage in the"

Strike: "residential mortgage loan originator activities"

Insert: "the activities of a loan processor or underwriter"

Page 9, lines 26 and 27

Following: "licensed as"

Strike: "a mortgage broker or"

Page 9, line 28

Following: "licensed as"

Strike: "a mortgage broker or"

Page 10, line 2

Following: "brokers"

Insert: ", mortgage lenders,"

Page 10, lines 3 through 8

Strike: "Any person through nonassignable."

Insert: "(1) The department is authorized to:

(a) participate in the nationwide mortgage licensing system and registry and

(b) shall require mortgage lenders, mortgage brokers, and mortgage loan originators to be licensed through the nationwide mortgage licensing system and registry by the dates set forth in subsection 4.

(2) The department may establish requirements as necessary to comply with the NMLS including:

(a) require payment of nonrefundable fees to apply for, maintain, and renew licenses through the nationwide mortgage licensing system and registry;

(b) set renewal or reporting dates;

(c) set procedures for amending or surrendering a license; and

(d) require any other activity necessary for participation in the nationwide mortgage licensing system and registry.

(3) The state portion of the licensing fees collected by the nationwide mortgage licensing system and registry under this section must be deposited into the department's account in the state special revenue fund to be used for administering this part.

(4) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the implementation date of subsection (1) is:

(a) April 1, 2010, for all new applicants applying after [the effective date of this act];

(b) June 30, 2010, for all licensees with current licenses as of [the effective date of this act]; and

(c) for loss mitigation specialists a date as set by the department by rule."

Page 10, lines 10 through 12

Strike: "A mortgage lender through broker license."

Insert: "(1) An entity may be simultaneously licensed as a mortgage lender and a mortgage broker provided that the entity meets all requirements for licensure as a mortgage lender and a mortgage broker."

Page 10, line 14

Following: "for"

Strike: "mortgage brokers and"

Page 10, line 15

Following: "seeking"

Strike: "a mortgage broker's license or"

Page 10, line 21

Insert: "(2) The preclicensing education courses that comply with the requirements of subsection (1) and that are approved by the nationwide mortgage licensing system and registry for any other state must be accepted with respect to the completion of preclicensing education requirements in Montana.

(3) If allowed by NMLS, the department is authorized to certify to NMLS that continuing education hours that were approved by the department have been completed by a mortgage loan originator if the department can make such a determination."

Page 10, line 23

Following: "license as a"

Strike: "mortgage broker"

Insert: "designated manager"

Page 11, line 1

Following: "requirements for"

Strike: "**mortgage brokers and**"

Page 11, line 2

Following: " seeking a"

Strike: "mortgage broker's license"

Page 11, line 2

Following: "~~individuals seeking~~"

Strike: "or a"

Page 11, line 15

Following: "registry"

Strike: "and adopted by the department"

Page 11, line 26 through 28

Strike: subsection (5) in its entirety

Insert: "(5) An individual may retake a test three consecutive times with each consecutive test being taken at least 30 days after the previous testing date.

(6) An individual who fails three consecutive tests may not take the test for at least 6 months from the date of failing the third test.

(7) A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years shall retake the test. The 5-year period may not take into account any time during which the person is a registered mortgage loan originator."

Page 12, line 1

Following: "**mortgage broker**"

Insert: ", **mortgage lender, or mortgage loan originator**"

Page 12, line 1 through Page 13, line 12

Strike: subsections (1) through (3) in their entirety

Insert: "(1) An applicant under this part shall apply for a license in a form prescribed by the department that complies with the requirements of the nationwide mortgage licensing system and registry. Each form must contain content as set forth by the nationwide mortgage licensing system and registry and may be changed or updated by the department as necessary to comply with the nationwide mortgage licensing system and registry.

(2) The department may establish a relationship or contract with the nationwide mortgage licensing system and registry or another entity designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this part.

(3) An applicant shall furnish information to the nationwide mortgage licensing system and registry concerning the applicant's identity, including but not limited to:

(a) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive information for a state, national, and international criminal history background check;

(b) legal name, birth date, and social security number for submission to the criminal investigation bureau of the Montana department of justice as authorized for a state criminal history background check; and

(c) personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including submission of authorization for the nationwide mortgage licensing system and registry and the commissioner to obtain:

(i) an independent credit report from a credit reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; and

(ii) information related to administrative, civil, or criminal findings by a governmental jurisdiction.

(4) To reduce the points of contact that the federal bureau of investigation may be required to maintain for purposes of subsection (3), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agencies.

(5) To reduce the points of contact that the department may be required to maintain for purposes of subsection (3), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source directed by the department."

Page 13, line 14

Following: "for"

Strike: "mortgage lender"

Insert: "an entity"

Page 13, line 14 through Page 15 line 1

Strike: subsections (1) through 8 in their entirety

Insert: "(1) In order for an entity to be considered for licensure, each of the following is required to independently meet the requirements established in [new section 16(1)(a) through (c)]:

(a) ultimate equity owners of 25% or more of the applicant if the equity owners are individuals;

(b) control persons of the applicant if the control persons are individuals; and

(c) individuals that control, directly or indirectly, the election of 25% or more of the members of the board of directors of the entity."

Page 15, line 4

Following: "32-9-116"

Strike: "Application for a mortgage loan originator license – employment"

Insert: "Employment"

Page 15, line 5 through Page 16, line 4

Strike: subsections (1) through (3) in their entirety

Renumber: subsequent subsections

Page 16, line 5

Following: "only for"

Strike: "an"

Insert: "one"

Page 16, line 5

Following: "or"

Strike: "an"
Insert: "one"

Page 16, line 13

Following: "termination"

Insert: "and remove the sponsorship of the mortgage loan originator on the nationwide mortgage licensing system and registry within 5 business days of termination."

Page 16, lines 14 and 15

Following: "lender by"

Strike: "submitting a relocation application to the department, along with"

Insert: "complying with the nationwide mortgage licensing system and registry and paying"

Page 16, line 15

Following: "The"

Strike: "return"

Insert: "removal of sponsorship"

Page 16, line 16

Following: "originator"

Strike: "to the department"

Page 16, line 18

Following: "until"

Strike: "department"

Insert: "nationwide mortgage licensing system and registry"

Page 16, line 18

Following: "followed to"

Strike: "reinstate"

Insert: "sponsor"

Page 16, line 19

Following: "has been"

Strike: "returned to the department"

Insert: "removed from sponsorship"

Page 16, line 21

Insert: "NEW SECTION. Section 14. Provisional licenses and previously licensed persons. The commissioner may establish by rule licensing requirements, fees, and interim procedures for licensing and acceptance of applications for the purposes of implementing an orderly and efficient licensing process. The commissioner may by rule establish expedited review and licensing procedures for a previously licensed person."

Renumber: subsequent sections

Page 16, line 24

Following: "(1)(b), an"

Strike: "individual mortgage broker or an"

Page 16, line 27

Following: "An"

Strike: "individual mortgage lender or an"

Page 17, line 1

Following: "mortgage"

Strike: "broker"

Insert: "loan originator"

Page 17, lines 4 and 5

Following: "fee"

Strike: "of \$500 for a mortgage broker and \$750 for a mortgage lender"

Insert: "\$1250"

Page 17, line 7

Following: "period"

Strike: "and expires on December 31"

Page 17, line 7

Following: "shall"

Strike: ", on or before November 30 of each year"

Page 17, line 8

Following: "pay to the"

Strike: "department"

Insert: "nationwide mortgage licensing system and registry"

Page 17, line 14

Following: "prescribed"

Insert: "means the license"

Page 17, lines 14 and 15

Following: "automatically"

Strike: "revokes the license"

Insert: "expires. The department may adopt procedures for the reinstatement of expired licenses that are consistent with the standards established by the nationwide mortgage licensing system and registry."

Page 17, line 19

Following: "part"

Insert: "and that the applicant has paid all fees for renewal of the license"

Page 17, line 20

Following: "(4)"

Strike: "All"

Insert: "The state portion of the"

Page 17, line 23

Following: "shall"

Strike: "provide evidence of registration with and maintenance of a unique identifier issued by"

Insert: "apply and become licensed through"

Page 17, line 28

Following: "to the"

Strike: "department"

Insert: "nationwide mortgage licensing system and registry"

Page 17, line 29

Following: "shall"

Strike: "provide evidence of registration with and maintenance of a unique identifier issued by the nationwide mortgage licensing system and registry and shall"

Page 18, line 7

Following: "information"

Strike: "to allow a supplemental"

Insert: "for a"

Page 18, line 9

Following: "(b)"

Strike: "legal name, birth date, and social security number; and"

Insert: "legal name, birth date, and social security number for submission to the criminal investigation bureau of the Montana department of justice as authorized for a state criminal history background check;"

Page 18, line 10

Following: "experience"

Insert: "in a form prescribed by the nationwide mortgage licensing system and registry"

Page 18, line 15

Insert: "(2) To reduce the points of contact that the federal bureau of investigation may be required to maintain for purposes of subsection (1), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agencies.

(3) To reduce the points of contact that the department may be required to maintain for purposes of subsection (1), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source directed by the department."

Renumber: subsequent subsections

Page 18, line 15

Following: "to the"

Strike: "department"

Insert: "nationwide mortgage licensing system and registry"

Page 18, line 19

Following: "jurisdiction"

Insert: ". A subsequent formal vacation of a revocation may not be considered a revocation"

Page 18, lines 20 through 27

Strike: subsection (ii) in its entirety

Insert: "(ii) the commissioner may by order vacate a revocation of a license and enter an appropriate order."

Page 19, line 1

Following: "laundering"

Insert: ". The pardon of a conviction is not a conviction for purposes of this subsection (4)(b)"

Page 19, lines 5 through 8

Strike: subsection (3) in its entirety

Insert: "(3) The applicant has not met the surety bond or net worth requirement as required pursuant to 32-9-123.

(4) The applicant has not completed the prelicensing education requirement described in [new section 8].

(5) The applicant has not passed a written test that meets the test requirements described in 32-9-110.

(6) The applicant made a material misstatement of fact or material omission of fact in the application."

Page 19, lines 10 through Page 20 line 6

Strike: NEW SECTION 16 in its entirety

Renumber: subsequent sections

Page 20, line 13

Following: "jurisdiction"

Insert: ". A subsequent formal vacation of a revocation may not be considered a revocation"

Page 20, lines 14 through 21

Strike: subsection (ii) in its entirety

Insert: "(ii) the commissioner may by order vacate a revocation of a license and enter an appropriate order."

Page 20, line 25

Following: "laundering"

Insert: ". The pardon of a conviction is not a conviction for purposes of this subsection (1)(b)"

Page 20, line 29 through Page 21 line 2

Strike: subsection (2) in its entirety

Insert: "(2) The applicant has not met the surety bond or net worth requirement as required pursuant to 32-9-123.

(3) The applicant has not completed the prelicensing education requirement described in [new section 8].

(4) The applicant has not passed a written test that meets the test requirements described in 32-9-110.

(5) The applicant made a material misstatement of fact or material omission of fact in the application."

Page 21, lines 3 through 7

Strike: subsection (3) in its entirety

Page 21, lines 10 and 11

Following: "originators"

Strike: "and mortgage brokers"

Page 21, line 11

Following: "originators"

Strike: "and all individual mortgage brokers"

Page 21, line 12

Strike: "department"

Insert: "nationwide mortgage licensing system and registry"

Page 21, line 15

Insert: "(2) The 12 hours of education must include at least:

(a) 3 hours of training on federal laws and regulations;

(b) 2 hours of training in ethics, including instruction on fraud prevention, consumer protection, and fair lending issues; and

(c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(3) A person who has successfully completed the education requirements that comply with the requirements of subsection (1) and that are approved by the nationwide mortgage licensing system and registry for any other state must be given credit toward completion of continuing education requirements in Montana.

(4) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

Page 21, line 21

Following: "trust"

Insert: "and escrow"

Page 21, line 26

Insert: "Whenever a licensee's usual business location is outside of this state the licensee shall, at its election, either maintain its books and records at a location in this state or reimburse the department for expenses incurred, including but not limited to staff time, transportation, food, and lodging expenses, relating to an examination or investigation under this part."

Page 21, line 29

Following: "trust"

Insert: "or escrow"

Page 22, line 15

Following: "office"

Strike: "and shall register with"

Insert: "through"

Page 22, line 17

Following: "to the"

Strike: "department"

Insert: "nationwide mortgage licensing system and registry"

Page 22, line 18

Following: "mortgage"

Strike: "broker"

Insert: "loan originator"

Page 22, line 21

Following: "to the"

Strike: "department"

Insert: "nationwide mortgage licensing system and registry for each office location that originates a residential mortgage loan"

Page 22, line 22

Following: "mortgage"

Strike: "broker"

Insert: "loan originator"

Page 22, line 23

Following: "either"

Strike: "a mortgage broker,"

Page 23 line 9

Following: "information"

Strike: "in writing to the department"

Insert: "nationwide mortgage licensing system and registry"

Page 23, line 12

Following: "termination"

Insert: "and remove the sponsorship of the designated manager on nationwide mortgage licensing system and registry within 5 business days after termination."

Page 23, line 15

Following: "mortgage"

Insert: "broker or"

Page 24, lines 8 through 12

Strike: subsection (1)(a) in its entirety

Insert: "(1) (a) A mortgage loan originator must be covered by a surety bond in accordance with this section. If a mortgage loan originator is an employee of or exclusive agent for a licensed mortgage lender or mortgage broker, the surety bond of the licensed mortgage lender or mortgage broker may be used in lieu of a mortgage loan originator's surety bond."

Page 24, line 17

Following: "broker"

Insert: ", mortgage loan originator,"

Page 25, line 10

Following: "requirement"

Insert: "provided that the actual net worth determined in the HUD audit is equivalent to the bond amount set forth for the corresponding dollar amount range set forth in (2)(b)(i) through (2)(b) (iii)."

Page 25, line 18

Insert: "NEW SECTION. **Section 23. Escrow fund.** (1) An escrow fund authorized for any purpose by a mortgage loan contract is subject to applicable state and federal requirements. Money received from a borrower by a mortgage lender licensed under this part must be considered as held in trust immediately upon receipt. The mortgage lender shall place escrow funds in a depository institution prior to the end of the third business day following their receipt."

(2) An escrow fund account must be a separate account established to hold only borrowers' funds. The account must be designated and maintained for the benefit of borrowers. Escrow funds may not be commingled with any other funds.

(3) Escrow funds must be kept in the segregated account until disbursement. Money maintained in an escrow fund account is exempt from execution, attachment, or garnishment.

(4) A licensee may not encumber the corpus of an escrow fund account or commingle other operating funds with account funds.

(5) An escrow fund account may be used only for:

(a) a payment authorized by the borrower or the mortgage loan contract or required by federal or state law;

(b) a refund to the borrower;

(c) transfer to a depository institution;

(d) transfer to the appropriate mortgage lender or mortgage servicer in the case of a transfer of servicing;

(e) a purpose authorized by the mortgage loan contract; or

(f) purposes of complying with an order issued by the commissioner or a court.

(6) Accounting for escrow funds must be performed in compliance with the aggregate accounting rules established in regulation X, 24 CFR 3500, and 71-1-115.

NEW SECTION. Section 24. Disclosure of mortgage costs by mortgage lender. (1) Within 3 business days of taking a mortgage loan application and prior to receiving any consideration from the borrower, the mortgage lender shall disclose the terms of the loan to the borrower in compliance with the disclosure requirements of the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2601, et seq., the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and any regulations promulgated under those acts.

(2) A mortgage lender shall disclose the terms of any prepayment penalty on the mortgage loan, including the amount of the prepayment penalty or the formula for calculating the prepayment penalty. If the initial mortgage loan offer does not include a prepayment penalty, but a prepayment penalty is later included in the mortgage loan offer, disclosure of the terms of the prepayment penalty must be made within 3 business days of the prepayment penalty being added to the mortgage loan offer.

(3) A licensed mortgage lender may not require a borrower to pay any fees or charges prior to the mortgage loan closing, except:

(a) charges to be incurred by the mortgage lender on behalf of the borrower for services from third parties necessary to process the application, such as credit reports and appraisals;

(b) an application fee;

(c) an interest rate lock-in fee if the borrower is provided an interest rate lock-in agreement, the terms of which must include but are not limited to:

(i) the expiration date of the interest rate lock-in agreement;

(ii) the principal amount of the mortgage loan, the term of the mortgage loan, and identification of the residential real estate;

(iii) the initial interest rate and the discount points to be paid; and

(iv) the amounts and payment terms of the interest rate lock-in along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund; and

(d) a commitment fee, upon approval of the mortgage loan application, if the borrower is provided a commitment in writing that it is signed by the mortgage lender and the borrower and the terms include the terms and conditions of the mortgage loan as well as the terms and conditions of the commitment, including but not limited to:

(i) the time period during which the commitment is irrevocable and may be accepted by the borrower, which may not be less than 7 calendar days from date of commitment or date of mailing, whichever is later;

(ii) the amount and payment terms of the commitment fee, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund;

(iii) the expiration date of the commitment;

(iv) conditions precedent to closing; and

(v) the terms and conditions, if any, for obtaining a refund of fees for third-party services or arranging for the transfer of third-party service work products to another mortgage lender.

(4) Any amount collected under subsection (3) in excess of the actual costs must be returned to the borrower within 60 days after rejection, withdrawal, or closing.

(5) (a) Except as provided in subsection (5)(b), fees or charges collected pursuant to this section, other than fees for third-party services collected pursuant to subsection (3)(a), must be refunded if a valid commitment is not produced or if closing does not occur.

(b) Applicable fees may be retained by the licensee in accordance with the terms of the commitment upon the licensee's ability to demonstrate any of the following:

(i) the borrower withdraws the mortgage loan application after the lender has issued a commitment on the same terms and conditions disclosed to the borrower on the most recent good faith estimate;

(ii) the borrower has made a material misrepresentation or omission on the mortgage loan application; or

(iii) the borrower has failed to provide documentation necessary to the processing or closing of the mortgage loan application and closing does not occur without fault of the lender."

Renumber: subsequent sections

Page 26, line 8

Following: "(ii)"

Strike: "if a mortgage broker, mortgage lender, or mortgage loan originator, conducts"

Insert: "conduct"

Page 26, line 19

Insert: "(2) A mortgage lender may not do any of the following:

(a) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(b) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:

(i) direct deposit to a borrower's account;

(ii) wire;

(iii) bank or certified check;

(iv) attorney's check drawn on a trust account; or

(v) other form as specifically authorized by applicable law;

(c) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;

(d) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;

(e) fail to take the actions required to affect a release of the lender's security interest in the property as described in 71-1-212;

(f) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of down payment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;

(g) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;

(h) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants; or

(i) falsely advertise or misuse names in violation of 18 U.S.C. 709."

Renumber: subsequent subsections

Page 26, line 19

Following: "borrower, the"

Strike: "mortgage broker, or"

Page 27, line 22

Following: "for the"

Strike: "mortgage broker, or"

Page 27, line 25

Following: "**suspension,**"

Insert: "**conditioning,**"

Page 27, line 27

Following: "suspension"

Insert: ", conditioning,"

Page 27, line 28

Following: "suspend"

Insert: ", condition,"

Page 28, line 4

Following: "suspended"

Strike: "or revoked"

Page 29, line 20

Strike: subsection (4)(a) in its entirety

Insert: "(4)(a) For the purposes of investigating violations or complaints arising under this part or for the purposes of examination, the department may review, investigate, or examine any licensee or person subject to this part as often as necessary in order to carry out the purposes of this part.

(b) The commissioner may direct, subpoena, or order the attendance of and may examine under oath any person whose testimony may be required about the subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner considers relevant to the inquiry.

(5) Each licensee or person subject to this part shall make available to the department upon request the documents and records relating to the operations of the licensee or person. The department is entitled to access to the documents and records and to interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, customers of the licensee or person concerning the business of the licensee or person, or any other person having knowledge the department considers relevant.

(6) The department may conduct investigations and examinations for the purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation, or license termination or to determine compliance with this part.

(a) The department has the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence including but not limited to:

(i) criminal, civil, and administrative history information, including confidential criminal justice information as defined in 44-5-103;

(ii) personal history and experience information including independent credit reports obtained from a credit reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; and

(iii) any other documents, information, or evidence the department considers relevant to an inquiry or investigation regardless of the location, possession, control, or custody of the documents, information, or evidence."

Renumber: subsequent subsections

Page 30, line 2

Strike: subsection (c) in its entirety

Insert: "The cost of an examination or investigation must be paid by the licensee or person within 30 days after the date of the invoice. Failure to pay the cost of investigation or examination when due will result in the suspension or revocation of a licensee's license."

Page 30, line 16

Insert: "(ii) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(iii) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this part;"

Renumber: subsequent subsections

Page 31, lines 5 and 6

Following: "registry"

Strike: ", including the payment of any associate costs"

Page 31, line 7

Following: "originator"

Strike: "licensees"

Insert: "applicants"

Page 31, line 8

Following: "part"

Insert: "apply for licensure and"

Page 31, line 8

Following: "part"

Strike: "register with"

Insert: "registration through"

Page 32, line 5

Following: "revoking"

Insert: ", conditioning,"

Page 32, line 12

Following: "in the"

Strike: "state general fund"

Insert: "department's account in the state special revenue fund and used to administer the provisions of this part."

Page 32, line 13

Following: "broker"

Insert: ", mortgage lender,"

Page 34, line 10

Insert: "NEW SECTION. **Section 36. Contingent Suspension.** If the Secretary of Housing and Urban Development determines by guideline, interpretation, or rule that any part of [this act] is out of compliance with SAFE act the operation and effect of that part is suspended."

Renumber: subsequent section